IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9950 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATAPBHAI SURAGBHAI VARU
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR SHAKTISINH GOHIL for the Petitioner
MS PAURAMI SHETH, ASSISTANT GOVERNMENT PLEADER for the Respondents

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 14/07/2006

ORAL JUDGMENT

1. The petitioner, an agriculturist, a social worker, an ex Member of Legislative Assembly (MLA) – Gujarat in the year 1980, is before this Court being aggrieved of an order passed by the District Magistrate, Amreli dated 04.11.2000. The order was confirmed in Appeal under Section 18 of the Arms Act, 1959 (hereinafter referred to as, “the Act”) by the Deputy Secretary, Home Department,

Government of Gujarat by order dated 02.07.2002.

2. The facts of the case leading to the present proceedings are that, the petitioner was holding weapon licences bearing Nos.7/J for 32 Bore Revolver and 4/J for 38 Bore Stick Gun issued in the year 1976, which were renewed up to 31.12.2001.

On 05.09.1999, a complaint was filed against the petitioner being C.R.No.I 25 of 1999. Respondent No.2 (the District Magistrate, Amreli) without giving any hearing to the petitioner, suspended the weapon licences of the petitioner till the final disposal of the Criminal Case arising from the aforesaid C.R.No.I 25 of 1999 by order dated 01.10.1999. The petitioner was directed to deposit both the weapons in the nearest Police Station. A copy of order dated 01.10.1999 is produced at Annexure-A to this petition.

3. The petitioner being aggrieved of that, filed an appeal before the Deputy Secretary, Home Department, State of Gujarat on 06.01.2000. The petitioner was told by letter dated 18.01.2000 that the petitioner will be intimated the hearing of the appeal. During pendency of the appeal, Criminal Case was decided on 03.06.2000. The petitioner, therefore, wrote a letter to the authority on 27.06.2000 informing the appellate authority that the Criminal Case which was filed against him is decided on

03.06.2000 and he is acquitted of the charges leveled against him. A copy of the acquittal order was enclosed with the said communication (dated 27.06.2000). The petitioner requested that the appeal pending be decided at an early date by giving an early date of hearing. It was mentioned in the said communication that the petitioner is an ex MLA, a member of the District Panchayat and also aa social worker; that he is in need of the weapons and hence, at the earliest, appropriate orders for issuance of the weapons may be passed.

4. The appellate authority by passing order under Section 18 of the Arms Act decided the appeal by order dated 29.07.2000. After recording the facts of the case and the contents of the communication dated 27.06.2000, the appellate authority remanded the matter to the District Magistrate, Amreli. It was recorded in the order that in view of the order passed by the learned Judicial Magistrate First Class, Rajula dated 03.06.2000, order dated 01.10.1999 passed by the District Magistrate, Amreli is required to be reconsidered. The appeal was partly allowed. Order dated 01.10.1999 passed by the District Magistrate was quashed.

5. The District Magistrate after taking into consideration the facts of the case, but without discussing any material, recorded in paragraph 2 of order

dated 04.11.2000 that, 'revoking the order of suspension of the licences and return of weapons will not be just and the same is not warranted in the interest of public law and order, public peace and public security. The District Magistrate under Clause (B) of Sub-section (3) of Section 17 of the Arms Act cancelled the licences of the petitioner. The petitioner was intimated that if he is aggrieved by the order, he can file an appeal within 30 days before the Deputy Secretary, Home Department.

The petitioner filed an appeal on 24.11.2000.

6. The appellate authority decided the this appeal by order dated 02.07.2002. The appellate authority has recorded that looking to the appeal memo and the original papers of the case, it is revealed that in Criminal Case No.1033 of 1999, the petitioner was acquitted only because the witnesses turned hostile and the matter is compromised between the parties. The appellate authority has also recorded that in view of the compromise between the parties, the complainant and the witnesses have not deposed against the appellant (the petitioner). The authority then recorded that thus, the case against the petitioner is not decided on merits; that the investigating officer has recorded that earlier also, the appellant has committed offence in the jurisdiction of

Rajula Police Station; that he carries an impression of being 'headstrong' hence, taking into consideration the law and order situation and the public interest, it is not deemed proper to revive the licences of the petitioner. The request for revival of the licences was rejected and the order passed by the District Magistrate dated 04.11.2000 was approved and the appeal dated 24.11.2000 was dismissed.

7. The learned advocate for the petitioner submitted that even in other case, which is referred to by the appellate authority without mentioning the number, it was Criminal Case No.980 of 2000, there also, the petitioner is acquitted by judgment and order dated 19.01.2002. A copy of which is produced at Annexure-I to this petition.

8. The learned advocate for the petitioner submitted that the orders passed by the District Magistrate, Amreli dated 04.11.2000 and by the appellate authority dated 02.07.2002 are not the speaking orders. In fact, the orders do not deal with the matter as required under the law. The original order (dated 01.10.1999) of suspending the licences of the petitioner was only and only on one ground that a criminal complaint is filed against the petitioner. There was no reference or indication that the petitioner is 'headstrong'; that some other offence

is registered against the petitioner in Rajula Police Station; that revival of licences will cause prejudice to the law and order situation. The learned advocate submitted that later orders have gone beyond the scope of the first order (dated 01.10.1999). The later orders are passed on extraneous consideration and hence, deserve to be quashed and set aside.

Learned advocate for the petitioner relied upon a decision of this Court in the matter of **DR HARISING HARNAMSING KHOSLA VS. E.F.DEBOO, COMMISSIONER OF POLICE, AHMEDABAD AND ANOTHER**, reported in 1969 (Vol. X) GLR 769. The learned advocate submitted that this Court way back in the year 1969 has held that, 'suspension of arm's licence' though can be said to be an administrative order, but then the authorities are required to observe the principles of natural justice. He submitted that it is well settled and well articulated in the aforesaid judgment that the principles of natural justice are applicable in the matters of suspension of arm's licence. He also submitted that observance of principles of natural justice provide the minimum required safeguard and hence, they should be strictly followed by the authorities so that the authorities do not cause injustice to the persons concern while dealing with such matters which are quite important to the person concern.

9. Learned advocate for the petitioner also referred to and relied upon a decision of this Court in the matter of **VIRJIBHAI PALABHAI SOLANKI VS. STATE OF GUJARAT AND OTHERS**, reported in 1998 (3) GLR 2072. The learned advocate submitted that in that case, the facts were almost identical and to an extent, gross then the facts of the present case. In that case, the petitioner had fired from his weapon of course in air near his residence during the incident; an offence was registered against him under Sections 307 and 34 of the Indian Penal Code and Section 25(1) of the Arms Act, 1959.

The learned advocate submitted that in that case, the District Magistrate had issued a show cause notice which was replied, but personal hearing could not take place. The authority rejecting all the contentions raised in the written reply, cancelled the licence.

Being aggrieved and dissatisfied by the order of cancellation of licence, Revision Application was preferred. The said Revision Application was also rejected. Thereafter, the petitioner was acquitted of all the charges levelled against him, the learned Additional Sessions Judge directed to entrust the Muddamal Pistol.

10. This Court taking into consideration the fact that

the authority deciding the Revision Application had not taken into consideration the judgment and order of the learned Additional Sessions Judge, allowed the application filed by the petitioner and declared that the petitioner shall be entitled to apply for revival of the licence issued to him which was calcelled by the order under challenge. A contention was raised that the petitioner did not produce the certified copy of the judgment and order passed by the learned Additional Sessions Judge, but the same was negatived as it was replied that as the date fixed for hearing was not intimated to the petitioner, he could not remain present before the authority and could not produce the certified copy of the order.

11. In the present case, the facts are not as grave as were in the case discussed hereinabove. In that view of the matter, this Court is of the opinion that orders dated 02.07.2002 and 04.11.2000 cannot be sustained. The same are quashed. The petitioner shall be entitled to apply for renewal of licence issued to him. The petition is allowed. Rule is made absolute with no order as to costs. Direct service is permitted.

(RAVI R.TRIPATHI, J.)

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